

ATTACHMENT 2

COVAD COMMUNICATIONS COMPANY
May 17, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET NO. 22469

COMPLAINT OF COVAD §
COMMUNICATIONS COMPANY AND §
RHYTHMS LINKS, INC. AGAINST §
SOUTHWESTERN BELL TELEPHONE §
COMPANY AND GTE SOUTHWEST INC. §
FOR POST-INTERCONNECTION §
AGREEMENT DISPUTE RESOLUTION §
AND ARBITRATION UNDER THE §
TELECOMMUNICATION ACT OF 1996 §
REGARDING RATES, TERMS, §
CONDITIONS AND RELATED §
ARRANGEMENTS FOR LINE-SHARING §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

DOCKET NO. 22168

PETITION OF IP COMMUNICATIONS §
CORPORATION TO ESTABLISH §
EXPEDITED PUBLIC UTILITY §
COMMISSION OF TEXAS OVERSIGHT §
CONCERNING LINE-SHARING ISSUES §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

PHASE I TESTIMONY OF TERRY MOYA ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

**PHASE I TESTIMONY OF TERRY MOYA
ON BEHALF OF COVAD COMMUNICATIONS COMPANY**

I. BACKGROUND

Q. PLEASE INTRODUCE YOURSELF.

A. My name is Terry Moya. I am Senior Vice President of ILEC Relations and External Affairs for Covad Communications Company ("Covad"). My business address is 8400 E. Crescent Parkway, Suite 200, Greenwood Village, CO, 80111.

Q. PLEASE DESCRIBE COVAD'S BUSINESS.

A. Covad is a facilities-based competitive local exchange carrier ("CLEC") focused on providing wholesale, high-speed broadband services using digital subscriber line ("DSL") technologies. Covad is a national CLEC and provides service to business and residential consumers in Texas.

Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS SENIOR VICE-PRESIDENT OF ILEC RELATIONS AND EXTERNAL AFFAIRS.

A. I am responsible for managing Covad's business relationship with SBC Communications, Inc. and its affiliates (collectively "SBC"), GTE Service Corporation and its affiliates (collectively "GTE"), and other ILECs to ensure that ILECs provide Covad with the open network access and unbundled network elements ("UNEs") that the law requires. Because of the importance of this relationship to Covad's business, I report directly to Covad's CEO, Robert Knowling.

Q. PLEASE BRIEFLY DESCRIBE YOUR BUSINESS AND EDUCATIONAL BACKGROUND BEFORE JOINING COVAD.

A. Immediately before joining Covad, I worked as the Vice President Operations & Technologies for U S WEST. In that position, I had primary responsibility for managing

the financing of U S WEST's network build out. I worked for U S WEST for a total of seven years, holding a number of different positions including supervisor of the outside plant construction contracting organization. For the first four and a half years I spent time in over a half dozen foreign countries helping establish and improving several different lines of business for U S WEST. These countries include Poland, Russia, Czech Republic, Hungary, Brazil and the United Kingdom. I graduated from the University of New Orleans in 1986 with a BS degree in Accounting.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to inform the Commission of the critical importance of line sharing to Covad, Texas consumers, and the development of telecommunications competition in Texas. I also want to explain the *minimum* interim terms and conditions that Covad needs from SWBT and GTE to provide line sharing in Texas.

Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS,

A. For the reasons I explain in my testimony, I make the following recommendations to the Commission:

- (a) The Commission should require SWBT and GTE to comply with the FCC's mandate and make line sharing available, in the configurations requested by Covad and Rhythms, throughout Texas on or before June 6, 2000;
- (b) The Commission should require SWBT and GTE to provide CLECs with a menu of splitter placement options, including the configuration in which an ILEC-owned splitter is placed at the MDF, so that each CLEC can chose the option that best serves that CLEC's network;

- (c) Under the ILEC-owned splitter configuration, the Commission should order SWBT and GTE to provide splitter functionality in port-at-a-time or shelf-at-a-time increments, at CLECs' sole option;
- (d) The Commission should set interim line-sharing pricing in accord with the testimony of Terry Murray in this docket and ensure that the wholesale cost of line sharing, at the very greatest, does not exceed the cost that SWBT and GTE attributed to their retail DSL services;
- (e) The Commission should order SWBT and GTE to provision line-sharing to CLECs within the following intervals:
 - (i) Line-sharing ordered between June 6, 2000 and September 6, 2000 shall be completed within three (3) business days of SWBT/GTE receiving an order from CLEC;
 - (ii) Line-sharing ordered between September 7, 2000 and December 7, 2000 shall be completed within two (2) business days of SWBT/GTE receiving an order from CLEC;
 - (iii) Line-sharing ordered after December 7, 2000 shall be completed within one (1) business day of SWBT/GTE receiving an order from CLEC;
 - (iv) Performance of any CLEC-requested de-conditioning shall extend the provisioning and installation interval by an additional 2 business days;
- (f) The Commission should require SWBT and GTE to provide CLECs with test access to the shared loop at any technically feasible point, including without limitation the MDF and/or IDF, as described in the testimony of Michael Zulevic.

II. THE IMPORTANCE OF LINE SHARING

Q. WHAT IS COVAD'S RELATIONSHIP WITH SWBT AND GTE IN TEXAS?

- A. Southwestern Bell Telephone Company (SWBT), SBC's local operating affiliate, is Covad's primary vendor in Texas. To provide service in most of Texas, Covad must collocate its equipment in SWBT central offices and lease unbundled network elements ("UNEs") from SWBT. SWBT is required by the Telecommunications Act of 1996 (the "Act") to open its network to Covad, and Covad's ability to offer services in areas where SWBT is the incumbent local exchange carrier ("ILEC") depends entirely on SWBT's compliance with the Act. Covad pays SWBT for both collocation and UNEs. Covad's service, however, competes directly in Texas with the DSL service provided by SWBT's retail division or by SWBT's affiliate, SBC Advanced Solutions, Inc. ("ASI").

GTE Southwest Incorporated, GTE's local operating affiliate in Texas, is also a significant vendor to Covad. GTE has the same obligations as SWBT, and the same unique control over the network within its serving area. GTE has shown a similar reluctance to open its network to competitors as required by law.

Q. HOW DOES THE EXISTENCE OF SBC'S ADVANCED SERVICES AFFILIATE AFFECT THE RELATIONSHIP BETWEEN SWBT AND COVAD?

- A. The bottom line is that SWBT still owns ASI and still profits directly from its success. SWBT, therefore, still has incentives to do as much as possible for ASI and as little as possible for competitors such as Covad.

Q. ISN'T SWBT OBLIGATED TO PROVIDE COVAD THE SAME TERMS AND CONDITIONS FOR LINE SHARING THAT IT PROVIDES TO ASI?

- A. Yes. In my opinion, however, this argument is a "red herring" that SWBT often employs in an effort to appear non-discriminatory, even when its policies blatantly discriminate against competitors. The notion that ASI negotiates its agreements with

A. Fundamentally, it is a matter of non-discrimination. Bell Atlantic, U S WEST, SWBT, BellSouth and GTE have been providing line sharing to themselves ever since they began to deploy DSL. The ILECs take advantage of line sharing to gain an improper competitive advantage over Covad beyond the normal advantage the ILEC already has through its monopoly control of the network.

Line sharing is also important for at least three additional reasons. First, line sharing should reduce the recurring costs of providing DSL to consumers. That is true because there is no incremental cost of the loop associated with line sharing (when compared with the cost of the loop for providing voice services alone).

Second, line sharing reduces the provisioning interval for DSL services. Because the loop used to provide line-shared DSL already is delivered and connected to the customer premises, the ILEC does not need the extra provisioning time associated with delivering a second loop to the customer premises.

Third, line sharing helps solve problems created when SWBT does not have a spare loop connected to the customer premise that it can lease to Covad. Currently, Covad must always lease a ~~second~~ line connected to a customer premise to provide DSL. SWBT often responds to Covad's orders for second lines by indicating that no such facilities are available. When that happens, the end-user is denied the ability to use DSL. Because line sharing permits Covad to use the existing voice loop, Covad will be able to reach consumers that otherwise would not be able to receive DSL because of the lack of the spare loop.

Q. HOW DOES LINE SHARING ACCELERATE DELIVERY OF DSL SERVICES TO TEXAS CONSUMERS?

- A. As stated above, line sharing uses an existing voice loop that already is provisioned to the customer premises. Thus, it is much easier to provision DSL across a shared line than it is to install a second line for DSL. Among other things, there is no truck roll required to the customer premise to connect the shared line from the end-user through to the DSL equipment. Truck rolls are often required to make that connection for a second line. Line sharing therefore allows consumers to get DSL more quickly than if they have to wait for the installation of a second line. When you consider the fact that CLECs like Covad cannot begin installing service across a line until after the second line is installed, you begin to understand why the provisioning time saved by line sharing will be such a boon to consumers.

III. THE COMMISSION SHOULD ORDER SWBT AND GTE TO MAKE LINE SHARING AVAILABLE TO ALL CLECS BY JUNE 6, 2000.

Q. ARE THE ILECS REQUIRED TO LINE SHARE WITH COVAD?

- A. Yes. The Federal Communications Commission issued its order requiring ILEC to provide line sharing to CLECs on November 18, 1999. Even before the issuance of the FCC's Order, Covad maintained that ILECs have an obligation to share lines with CLECs. The FCC agreed and has ordered ILECs to provide CLECs with access to a new high frequency spectrum network element for the purpose of line sharing.

Q. DID THE FCC SET A DEADLINE FOR ILEC IMPLEMENTATION OF LINE SHARING?

- A. Yes. In several places throughout the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 ("Line-Sharing Order"), the FCC states that ILECs should provide CLECs within 180 days of publication

Comparing SWBT's 18% commitment to those of other ILECs highlights SWBT's poor performance.

Q. HAS COVAD BEEN SUCCESSFUL IN ITS EFFORTS TO REACH AN AGREEMENT WITH GTE?

Again, Covad's efforts to negotiate an line sharing agreement with GTE that complies with the law and the FCC's ruling have been unsuccessful. Although GTE's violation of the FCC's deployment deadline is not as blatant as SWBT's, GTE also is preventing competition in other ways. For example, GTE proposes to charge CLECs a non-recurring rate of \$54.35 simply to submit an order for line-sharing. GTE also seeks to charge competitors \$91.04 to provision the line-sharing UNE to CLECs. Further, GTE refuses to provide Covad with an unencumbered right to access the shared loop for testing, preventing Covad and other CLECs from ensuring that their customers receive a quality DSL service.

To ensure that competition can flourish during the Commission's resolution of these issues in the permanent phase of this proceeding, the Commission should order GTE and SWBT to comply with the interim rates recommended by Terry Murray. In addition, SWBT and GTE should be required to provide Covad and other CLEC with unencumbered test access to the shared loop as described in the testimony of Michael Zulevic.

IV. MINIMALLY ADEQUATE INTERIM TERMS AND CONDITIONS FOR LINE SHARING.

Q: WHAT CAN THE COMMISSION DO TO MAKE SURE THAT COVAD AND OTHER CLECS RECEIVE LINE SHARING ON NON-DISCRIMINATORY TERMS AND CONDITIONS?

A. Overall, the Commission should order SWBT and GTE to execute the proposed Interim Contract Language submitted by Covad and Rhythms in this proceeding. This 11-page document establishes the minimum terms and conditions that Covad requires to compete meaningfully in Texas. Unlike the language proposed by SWBT and GTE, the Covad-Rhythms proposed language complies with the FCC's *Line-Sharing* and *Advanced Services* Orders. In addition, unlike SWBT's proposed language, it does not attempt to impose conditions on the parties that are unrelated to line-sharing.

In particular, the Commission should order SWBT and GTE to comply with the FCC's implementation deadline and to make every central office where a DSL CLEC is collocated ready for line sharing, in the configuration requested by the CLEC, on or before June 6, 2000. If SWBT and GTE do not meet this deadline, the Commission should expressly find that SWBT and GTE violated the FCC's *Line Sharing Order*.

The Commission also should order SWBT and GTE to provide the menu of central office network architectures and shared-line provisioning options proposed by Covad's Mike Zulevic by the June 6, 2000 deadline. Each one of these architectures is in use in one or more states right now, and they each therefore are presumptively technically feasible and commercially reasonable provisioning methods that must be offered by the ILEC. The Commission also should compel SWBT and GTE to provide CLECs with the option of purchasing the use of the splitters necessary to provide line sharing on a shelf-at-a-time basis.

The Commission should order SWBT to provide line sharing to Covad at the prices suggested by Covad and Rhythms' costing witness, Terry Murray. This means that the cost for the high frequency spectrum network element should be \$0. In addition,

the Commission should recognize that the CLEC and ILEC equipment necessary for line sharing are exactly the same and therefore not allow SWBT or GTE to charge more for the use, purchase and/or installation of such equipment than SWBT has disclosed as costs in its federal DSL tariff.

The Commission should recognize that it takes less time to provision a shared line than it does to provision a second line. As Mike Zulevic has testified, it takes no more than 10 minutes to make the cross-connects necessary to provision line sharing in a properly configured central office. Based on that difference, the Commission should order SWBT and GTE to provision all shared lines within the intervals specified in the Covad-Rhythms Proposed Interim Contract Language.

Q: WHY IS IT IMPORTANT FOR THE COMMISSION TO REQUIRE SWBT TO PROVIDE SPLITTER ACCESS ON SHELF-AT-A-TIME INCREMENTS?

A. As the Commission is aware, SWBT has agreed to provide Covad with access to SWBT owned splitters for the purpose of granting access to the high frequency spectrum. Mr. Zulevic's testimony gives a more complete description of how splitters are used for that purpose. SWBT, however, will only offer CLEC's the ability to lease one port of the splitter at a time. The typical rack-mounted splitter has 96 ports. The typical frame-mountable splitter has 16. The number of splitter ports defines the number of telephone lines that can be provisioned through the splitter in a one-to-one correlation. SWBT should be required to provide both options to the CLECs.

Leasing the splitter one port at a time can create a number of problems. First, it places all responsibility for capacity management with SWBT and GTE. In other words, Covad will have no idea how many splitter ports are available to it in any central office. If the ILEC runs out of splitter ports because of an unexpected surge in ordering from one

or more CLECs, then Covad's customers will not be served. If Covad can purchase splitter ports on a shelf-at-a-time basis, however, then Covad will know how many splitter ports are available to it. Covad can then anticipate when new splitters will be needed and request that the ILEC provide them in plenty of time to allow Covad to serve new customers without delay.

Second, provisioning lines through splitters one port at the time increases the chance for provisioning errors. The ILEC could, for example, accidentally provision a Covad customer to a splitter port leased by another CLEC. If splitters are leased one shelf at a time, then the splitter shelf can be hard-wired through to Covad's DSLAM. That reduces the number of connections that the ILECs will need to make when it provisions a line. It is also safe to assume that a central office technician is less likely to provision a line through the wrong piece of equipment than that technician is to provision a line through the wrong port on the same piece of equipment.

Q: WHAT FACTORS DO YOU BELIEVE THE COMMISSION SHOULD CONSIDER WHEN DETERMINING WHICH COST PROPOSALS TO ADOPT IN THIS ARBITRATION?

A. I am not a lawyer and cannot address the legal standards that the Commission should consider. As a businessperson, however, I think the Commission should give significant consideration to the effect that its decisions will have on competition and consumer choice in Texas.

Q: WHAT DO YOU MEAN BY THAT?

A. The higher costs Covad must pay, the higher the prices will be to the consumer. Because of that, Texas consumers will be adversely affected if the Commission imposes

on CLECs any costs beyond the minimum incremental cost necessary to provide the network element or service purchased by Covad from SWBT.

The prices proposed by SWBT and GTE for line sharing, for example, result in a higher per-line cost than that of an unbundled loop in Texas. That proposal makes no economic sense at all and appears designed to prevent CLECs from line sharing in Texas. Indeed, SWBT is proposing that CLECs pay one-half the cost of the local loop for line sharing, even though there is no incremental cost for the loop associated with line sharing. That is, the cost of the loop remains the same whether the loop is carrying voice service only or voice plus DSL. Since there is no incremental cost for the loop when DSL is added to a loop already carrying analog voice traffic, the only reason I can think of that SWBT wants to charge more than \$0 for the loop in a line sharing environment is to increase CLEC prices and discourage line sharing in Texas. The Commission should not endorse that effort.

Similarly, although GTE claims to offer a zero shared-loop cost, it seeks to unjustly recover for that offer by imposing new recurring rates, and inflated ordering charges.

Q: HAS COVAD PROPOSED ITS OWN COST MODEL IN THIS DOCKET?

A. Yes. Covad and Rhythms have jointly sponsored the Testimony of Terry Murray and other expert witnesses to testify about the costs associated with line sharing. Ms. Murray's testimony recommends reasonable interim pricing largely based upon prior decisions by this Commission. Permanent cost proceedings will be supported with more detailed information.

Q. WHY ARE PROVISIONING INTERVALS IMPORTANT TO COVAD?

A. This is a critical issue because it directly affects Texas consumers. The ILECs' provisioning intervals determine how quickly or slowly customers will get the DSL service that they order. Obviously, Covad cannot provide its customers with service until the ILEC delivers the loop across which the service will be provided. Even after the ILEC delivers the loop, Covad still has work to do to provide final DSL service. Accordingly, SWBT and GTE should be ordered to provide the fastest provisioning intervals possible. Line sharing should make provisioning much easier, as described in Mr. Zulevic's testimony.

Q. HOW DOES LINE SHARING ACCEPTANCE TESTING AFFECT PROVISIONING?

A. Line sharing acceptance testing ("LSAT") is a simple means by which both the ILEC and Covad can confirm that the loop that the ILEC is delivering has been properly provisioned to the correct location. In other words, it provides Covad a way to determine whether the ILEC is delivering the loop that Covad ordered. With LSAT, the ILEC and Covad can significantly reduce the number of trouble tickets that are opened because of loop provisioning problems within the first seven days after a loop is delivered. LSAT permits Covad and the ILEC to determine right away whether there are problems with the loop and then fix those problems. Again, this is a customer affecting issue. Consumers will receive DSL faster and with fewer troubles if the Commission orders SWBT and GTE to provide LSAT.

Q. IS ACCEPTANCE TESTING MORE OR LESS IMPORTANT FOR LINE SHARING?

A. Acceptance testing is important for both line sharing and more traditional UNEs, but I think it is more important for line sharing – particularly in the early stages of deployment. Because this is a new service, SWBT and GTE are prone to make many

mistakes in the early days of provisioning. While we would prefer that the mistakes not be made, we expect them to occur. With acceptance testing we should be able to identify and rectify any mistakes right away. That should increase the number of successful installs and, we hope, result in more rapid normalization of the line sharing provisioning process.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes. However, Covad reserves the right to supplement my testimony.

ATTACHMENT 3

COVAD COMMUNICATIONS CO.
May 4, 2000

PROJECT NO. 22165

IMPLEMENTATION OF DOCKET
NUMBERS 20226 AND 20272

§
§
§

PUBLIC UTILITY
COMMISSION OF TEXAS

PROJECT NO. 16251

INVESTIGATION OF
SOUTHWESTERN BELL
TELEPHONE COMPANY'S
ENTRY INTO TEXAS INTERLATA
TELECOMMUNICATIONS MARKET

§
§
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§
§

PUBLIC UTILITY
COMMISSION OF TEXAS

**MOTION OF COVAD COMMUNICATIONS COMPANY TO REQUIRE
SOUTHWESTERN BELL TO SUPPLEMENT ITS RESPONSE TO ORDER NO. 6**

Covad Communications Company ("Covad") files its Motion to Require Southwestern Bell Telephone Company to Supplement Its Response to Order No. 6.

1. On April 18, 2000, the Commission issued Order No. 6 stating:

In order to determine if Southwestern Bell Telephone Company (SWBT) has satisfactorily implemented the OSS enhancements required by the Arbitration Award, SWBT shall provide the Commission with additional information. SWBT shall provide information on OSS enhancements, as **required by the Award**, with a description of all enhancements that will roll-out, **all databases that will be affected**, and any other work that is being done, as well as timeframes, and/or milestone dates.

(Order No. 6 (emphasis added)).

2. Under the Arbitration Award,

SWBT must provide Petitioners with nondiscriminatory access, whether that access is available by electronic or manual means, to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing for DSL-capable loops. This includes "the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems." [UNE

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OFFICE OF THE SECRETARY

Remand Order ¶ 425.] Petitioners must be given nondiscriminatory access to the same OSS functions that SWBT is providing any other CLEC and/or SWBT or its advanced services affiliate. This includes any operations support systems utilized by SWBT's service representatives and/or SWBT's internal engineers and/or by SWBT's advanced services affiliate to provision its own retail xDSL service.

(Arbitration Award at 60 (emphasis added).)¹ Identical language appears in Covad's interconnection agreement with SWBT. (Ex. A ¶ 5.1.)

3. SWBT filed its response to Order No. 6 on April 19, 2000. Although the Response provides some information about the types of pre-order and order interfaces SWBT intends to provide, it does not list all of the OSS systems and databases that are utilized by SWBT's service representatives, its internal engineers or its advanced services affiliate to provision its own retail xDSL service. Nor does SWBT's Response reveal the information contained in those systems and databases.

4. SWBT's failure to provide this information creates significant impediments to competition. Without a listing of all OSS systems, including databases, and the information contained in those systems, Covad, other CLECs, and this Commission have no means of verifying SWBT's compliance with the Arbitration Award. Information that SWBT's retail division or affiliate presently uses to provision xDSL service may be wholly unavailable to competitors, allowing SWBT and its affiliate a significant competitive advantage.

5. Accordingly, Covad requests the Commission to order SWBT to supplement its April 19 Response with

(a) a list and description of all OSS systems, whether manual or computerized, presently used or planned for use for pre-ordering,

ordering, provisioning, maintenance and repair, and billing for DSL-capable loops by SWBT, its services representatives, its engineers, or its advanced services affiliate; and,
(b) a list of all databases presently used or planned for use for pre-ordering, ordering, provisioning, maintenance and repair, and billing for DSL-capable loops by SWBT, including a description of the *all* information contained in those databases.

Respectfully submitted,

Christopher V. Goodpastor
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By: 

CHRISTOPHER V. GOODPASTOR
State Bar No. 00791991

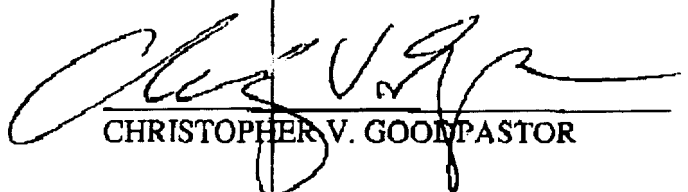
¹ The Commission further stated that "SWBT must provide real time, electronic access to all systems needed for efficient provisioning of advanced services such as xDSL." (Arbitration Award at 62.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via hand-delivery, first-class mail, or facsimile this ~~14th~~ day of April, 2000.

C. M. May

C. M. May


CHRISTOPHER V. GOODPASTOR

SWB
May 11, 2000

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PROJECT NO. 22165

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**SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO
COVAD COMMUNICATIONS COMPANY'S MOTION TO REQUIRE
SOUTHWESTERN BELL TELEPHONE COMPANY TO
SUPPLEMENT ITS RESPONSE TO ORDER NO. 6**

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cc: Rowland L. Curry, Arbitrator, PUC (hand delivered)
Melanie M. Malone, Arbitrator, PUC (hand delivered)
All Parties of Record (hand delivered)

PROJECT NO. 22165

IMPLEMENTATION OF DOCKET

§
§
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PUBLIC UTILITY COMMISSION

NUMBERS 20226 AND 20272

OF TEXAS

**SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO
COVAD COMMUNICATIONS COMPANY'S MOTION TO REQUIRE
SOUTHWESTERN BELL TELEPHONE COMPANY TO
SUPPLEMENT ITS RESPONSE TO ORDER NO. 6**

COMES NOW, Southwestern Bell Telephone Company ("SWBT") and files this response to Covad Communications Company's ("Covad") Motion referenced above. SWBT's position is simple: Covad has ignored a prior Arbitrators' decision, and has chosen instead to parse words used in the Arbitration Award in Docket No. 20226 and Docket No. 20272 in an effort to expand SWBT's obligations.

Covad's Motion reflects its desire to ignore the method by which this Commission decided to insure nondiscriminatory treatment in the preorder context. With regard to loop make-up information, the Arbitration Award required SWBT to develop enhancements to its Datagate and EDI Interfaces—that is, create "an electronic gateway to a database that contains the loop make-up information"—and make the gateway available on a nondiscriminatory basis.¹ SWBT has taken the necessary steps to accomplish this task, as SWBT's April 20 filing shows.

Covad, apparently, is not satisfied with the creation of electronic gateways that make loop make-up information available on a nondiscriminatory basis. Instead, Covad wants to know the source for each data point that is made available to the CLECs. This goes well beyond the requirements of the Arbitration Award and is contrary to the

¹ See Arbitration Award, at 76 (emphasis added).

obvious logic (and elegance) of the "gateway" concept. Simply put, creating a gateway that is available to all relevant parties insures nondiscrimination, as the gateways provide access to the same loop make-up information regardless of which entity uses the gateway to acquire such information. In other words, the CLECs have access to the same source of information in the same manner as is available to SWBT's affiliate, Advanced Solutions, Inc. Moreover, the gateway handles all requests on a nondiscriminatory "first in, first out" basis. For this reason, the gateway mechanism insures that each request for loop make-up information is processed on a nondiscriminatory basis. SWBT's compliance with this nondiscrimination obligation is illustrated in the last attachment to SWBT's April 19, 2000, filed in Docket No. 22165.

Interestingly, these issues have already been raised before the Commission. In a memo filed with the Commission January 20, 2000, the Arbitrators in Docket No. 20226 and Docket No. 20272 gave their view of a dispute between SWBT and Rhythms Links, Inc. ("Rhythms") concerning pre-ordering functions. The Rhythms/SWBT dispute dealt with the number of interfaces SWBT was obligated to enhance under the Arbitration Award, in the context of pre-ordering. The Arbitrators agreed that SWBT's obligation was limited to enhancing Datagate and EDI² for preordering purposes (although SWBT has since enhanced other interfaces used in preordering). Importantly, the Arbitrators concluded that:

² The Arbitrators' view was adopted by the Commission. See Revised Order Approving Interconnection Agreements, filed February 9, 2000, at page 6.

"The Arbitrators believe that such enhancements will provide nondiscriminatory access to the same OSS functions that SWBT is providing any other CLEC and/or SWBT or its advanced services affiliate."³

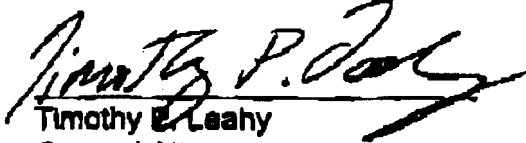
In other words, the "nondiscriminatory access to the same OSS functions" which Covad asserts is now lacking has already been found to be available once SWBT completes the enhancements that are addressed in SWBT's April 20 filing.

For these reasons, there is no reason for any further filing by SWBT. The Commission should not require SWBT to supplement its response to Order No. 6, and Covad's Motion should be denied.

³ Memorandum To: *Chairmen Pat Wood, III, Commissioner Judy Walsh and Commissioner Brett A. Perlman*, From: *Katherine Faraba, Rowland Gurty, Arbitrators; Melanie Malone, Elango Rajagopal, Jennifer Kambhampati, and Abigail Klement, Staff Arbitration Advisors*; Re: PUC Docket No. 20226 - Petition of Rhythms Links, Inc. For Arbitration To Establish An Interconnection Agreement With Southwestern Bell Telephone Company; PUC Docket No. 20272 - Petition of Dioca Communications, Inc., D/B/A Covad Communications Company For Arbitration Of Interconnection Rates, Terms, Conditions And Related Arrangements With Southwestern Bell Telephone Company, at page 8. (January 20, 2000) (emphasis added).

Respectfully Submitted,

ANN E. MEULEMAN
General Counsel-Austin


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CERTIFICATE OF SERVICE

I, Timothy P. Leahy, General Attorney, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 11th day of May, 2000 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.



ATTACHMENT 4

COVAD COMMUNICATIONS CO.
May 12, 2000

PROJECT NO. 22185

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IMPLEMENTATION OF DOCKET §
NUMBERS 20226 AND 20272 § PUBLIC UTILITY
§ COMMISSION OF TEXAS

**MOTION OF COVAD COMMUNICATIONS COMPANY TO
RECONSIDER ORDER APPROVING SWBT'S
PLAN TO ENSURE COMPETITIVE NEUTRALITY**

Covad Communications Company ("Covad") files its Motion to Reconsider Order Approving SWBT's Plan to Ensure Competitive Neutrality.

1. In response to Order No. 7, SWBT filed a Modified Plan to Ensure Competitive Neutrality ("Modified Plan") on May 1, 2000. On May 8, 2000, the Arbitrators in this docket issued Order No. 10, approving SWBT's Modified Plan. Covad received a copy of this Order on May 11, 2000.

2. Covad respectfully requests the Arbitrators to reconsider the Order Approving SWBT Modified Plan. The DSL Arbitration Award requires SWBT to prepare a plan for approval by the Commission "whereby 'firewalls' are constructed between SWBT's retail and wholesale organizations, the purpose of which is to restrict the flow of competitively beneficial information." (Arbitration Award at 70.) The Award further stated:

The Arbitrators are troubled by the inconsistencies regarding the relationship between SWBT's retail and wholesale operations, and find that the issue of nondiscriminatory access must be further addressed. **SWBT should not be allowed to assign employees to both wholesale and retail responsibilities**, nor should SWBT employees be allowed access to information that in any way may advantage its retail advanced services operations over those of its competitors.

(Arbitration Award at 61 (emphasis added).)

3. Order No. 7 required SWBT to make further modifications to its proposed Plan for Competitive Neutrality. Although the Response contains some of the elements of competitive neutrality required by the Commission, SWBT's proposed Plan is still woefully deficient. In particular,

- SWBT's proposed Plan does not prevent SWBT from assigning employees to both wholesale and retail responsibilities, contrary to the express language of the Arbitration Award;
- Although the Plan discusses the treatment of "Competitor Information," the definition of this term does not include CLEC customer information (*e.g.*, information that could be used by SWBT to contact a CLEC's customer including the name, address, telephone number, type of service requested, anticipated installation dates, etc.);¹
- SWBT's proposed Plan does not describe the methods by which the confidentiality of competitively sensitive information will be maintained, such as the creation of a screen or firewall, limitation of electronic access, and segregation of paper and electronic files.

4. Without an express evidentiary showing of SWBT's implementation of the above elements, Covad will be unable to determine in all instances whether (1) SWBT is complying with the Arbitration Award, and (2) whether SWBT is sharing competitively sensitive CLEC information with its retail division.

¹ (Ex. A at 4.)

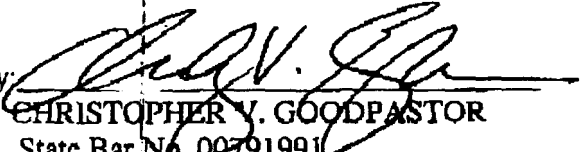
5. Accordingly, Covad requests the Arbitrators to reconsider Order No. 10 and to order SWBT to supplement its May 1 Response with

- (a) a modified Plan that expressly forbids the assignment of SWBT employees to both wholesale and retail responsibilities;
- (b) a modified Plan that expands the definition of "Competitor Information" to include any information received from a CLEC, including without limitation CLEC customer information; and,
- (c) a detailed description of the methods that SWBT intends to employ to ensure the confidentiality of CLECs' competitively sensitive information.

Respectfully submitted,

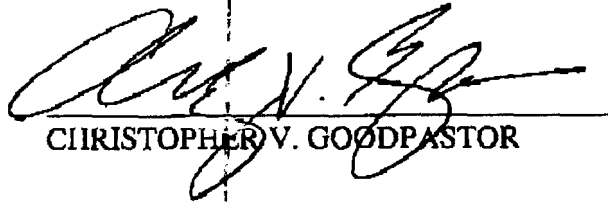
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By:


CHRISTOPHER V. GOODPASTOR
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via hand-delivery, first-class mail, or facsimile this 12th day of May, 2000.


CHRISTOPHER V. GOODPASTOR

Officer in charge of Network Engineering and Planning and all reporting management employees

Officer in charge of Network Operations and all reporting management employees

Officer in charge of Information Services and all reporting management employees

Officer in charge of Wholesale and all reporting management employees

Officer in charge of Marketing (Retail) and all reporting management employees

A recent Arbitration Award issued in Texas raised questions about Southwestern Bell Telephone Company's ("SWBT") use of loop information in the context of DSL technologies.¹ The Award also expressed concern about the sharing of sensitive competitor information between SWBT's retail and wholesale organizations, specifically when new products are being developed for retail deployment. As a result, the Award required SWBT to create "firewalls" to prevent impermissible flows of information between SWBT's wholesale xDSL organization and SBC Advanced Solutions Inc. ("ASI"), the current provider of our retail xDSL services in Texas. In the context of sharing certain information, SWBT must treat ASI as any other competitor-customer is treated.

ASI is a new and distinct legal and business entity, separate from SWBT. ASI is a subsidiary of SBC Communications Inc., and an affiliate of SWBT. SWBT is an incumbent local exchange carrier ("ILEC"), with obligations to provide non-discriminatory interconnection to competitive local exchange carriers ("CLECs"). ASI is also a CLEC, providing xDSL services, among other services, in Texas. The Federal Communications Commission permits ASI and SWBT to jointly and exclusively market their respective services and cooperate in a limited number of other ways, but otherwise SWBT must treat ASI as it would any other CLEC. To the extent ASI/SWBT activities fall within these "exclusive" spheres, as a general rule SWBT may share proprietary information with ASI without being obligated to provide that same information to unaffiliated CLECs. However, even with respect to "exclusive" activities, SWBT cannot share with ASI proprietary information SWBT has gained from CLECs in SWBT's role as an ILEC.

¹ See Docket No. 20226; *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, and Docket No. 20272; *Petition of Diaca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, at page 70.

SWBT's obligations can be divided into two parts:

- **the obligation to avoid providing or obtaining information about the condition and availability of loops in SWBT's network in a way that is not permitted, as explained in more detail below; and**
- **the obligation to keep confidential information received from competitive DSL carriers as a result of SWBT providing service to those carriers.**

As you know, the SBC Code of Business Conduct places obligations on all employees and requires that you and your employees review these requirements each year. Employees who fail to comply with the Code of Business Conduct and applicable guidelines are subject to disciplinary action up to and including dismissal.

The first section of the Code of Business Conduct² mandates that employees conduct business according to the highest ethical standards, stressing that under no circumstances should any employee engage in any conduct that violates or gives the appearance of violating the requirements set forth in the Telecommunications Act or any other laws or regulations. The Competition Guidelines, which govern relationships with Competitors, place additional obligations on employees, including rules prohibiting misuse of proprietary and competitive information.

Providing Information To SWBT Retail Sales And Marketing Or ASI

SWBT has existing policies and guidelines regarding certain loop make-up information possessed by SWBT's network operations organization ("Telco Loop Information"). Disclosure of Telco Loop Information to retail sales and marketing operations or ASI is only permitted under certain formal processes.

Telco Loop Information that is available to SWBT's retail sales and marketing operations (or ASI) for the provision of Advanced Services must be made available at parity and in a non-discriminatory manner. Compliance with this requirement can be demonstrated by strict adherence to established procedures. For example, if Retail sales representatives make phone calls to engineers to get loop qualification information verbally instead of following the formal loop qualification process, it will be difficult, if not impossible, to demonstrate compliance with parity and nondiscrimination requirements.

Under recent FCC Orders—including the Order which approved the merger of SBC and Ameritech—SWBT has certain obligations to provide non-discriminatory access to Telco Loop Information for Advanced Services. This means that if such information is given to either SWBT's retail sales and marketing organizations or to ASI for the deployment of xDSL and other Advanced Services, it must be made available under similar terms and conditions to third party carriers, and in similar time frames. To the extent certain Telco

² See Attachment A for a copy of this section.

Loop Information is not normally provided to either SWBT's retail personnel or ASI because ASI is not providing xDSL or other Advanced Services from a particular end office, it must nonetheless be provided to requesting third party carriers for the provision of Advanced Services when available.

In short, no Telco Loop Information can be passed to either SWBT retail sales and marketing personnel or ASI except via pre-approved processes. When dealing with Telco Loop Information, ASI must be treated as other CLECs are treated with regard to SWBT's network provisioning, information services, and wholesale activities.

These issues are complex. As a result, you should consult your supervisor and the appropriate attorney in the Legal Department, should you have any questions about these matters.

General Treatment Of Third Party Proprietary Information

This portion of this letter reinforces the importance of SWBT's existing policies and guidelines regarding third party information received from a competitor-customer ("Competitor's Information"). Disclosure of Competitor's Information to SWBT's retail sales and marketing operations or to ASI is strictly prohibited, as this information could be misused to allow SWBT's retail organization or ASI an unfair advantage over competitors.

The basic rules relating to Competitor's Information are straightforward.

- Keep information received from competitor-customers confidential.
- Use information received from competitor-customers only for the limited purposes for which that information has been provided.
- Follow all statutes, rules, regulations, commission orders, and contractual non-disclosure obligations.
- Even in the absence of a clear rule, assume that information received from competitor-customers is to be held in confidence and do not disclose it to others within the Company or to third parties who do not have "a need to know."

Section 3.3.11³ of the SBC Competition Guidelines specifically prohibits sharing within the family of companies any Competitor's Information received from competitor-customers, unless the information is required to perform legitimate business transactions with the competitor-customer.

Section 3.7⁴ of the SBC Competition Guidelines covers the receipt of information from competitors and provides examples of activity that may violate legal duties as well as Company policy.

³ See Attachment B for a copy of this section.

⁴ See Attachment C for a copy of this section.

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Competitor's Information may include: CLEC order forecasts, collocation deployment locations, target market areas, and equipment technologies. Sharing such information with personnel without a need to know may violate legal duties and expose the Company to claims of improper conduct. Therefore, personnel involved in network provisioning, information services, and wholesale activities should consult the Legal Department to determine the extent to which such information may be revealed, either in individualized or aggregated form, should such sharing of information be requested.

Similarly, while network organizations are critical in the development of products and services for both SWBT retail and wholesale (and ASI), these organizations cannot improperly transfer Competitor's Information. During the product development process, network personnel are key players on retail development teams as well as wholesale deployment teams. Network participation on both retail and wholesale teams is required to ensure that the process and procedures are developed in parity. In addition, retail and wholesale product management must coordinate to maintain like feature and functionality for products to be in parity. For example, switch port features developed for retail need to be coordinated with the wholesale counterparts to ensure timely rollouts to CLECs. However, the coordination between these groups is for the purpose of ensuring parity. For these reasons, guidance from the Legal Department must be sought before any Competitor's Information is shared with other working groups within the company.

It is essential that each of us comply with the letter, spirit and effect of these policies. For this reason, each of your organizations must insure that all relevant personnel are thoroughly educated about SWBT's obligations addressed in this letter. Further, the SBC Competition Guidelines will be revised consistent with this letter, to clarify SBC's policy on relationships among affiliates and with competitors. Should there be any questions about your obligation as an employee, you should contact your supervisor and/or the attorney serving your organization.

TO BE SIGNED BY OFFICER OF SWBT OR SBC